

## Rule 8. General Rules Of Pleading.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether a complaint, counterclaim, crossclaim, or third party claim, shall contain (1) a statement in ordinary and concise language of facts showing that the court has jurisdiction of the claim and is the proper venue and that the pleader is entitled to relief, and (2) a demand for the relief to which the pleader considers himself entitled. In claims for unliquidated damage, a demand containing no specified amount of money shall limit recovery to an amount less than required for federal court jurisdiction in diversity of citizenship cases, unless language of the demand indicates that the recovery sought is in excess of such amount. Relief in the alternative may be demanded.

(b) Defenses: Form of Denials. A party shall state in ordinary and concise language his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the claim, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments, except such designated averments or paragraphs as he expressly admits, provided that he may admit any part thereof and deny the remainder. When the pleader intends in good faith to controvert all averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In responding to a complaint, counterclaim, cross-claim or third party claim, a party shall set forth affirmatively accord and satisfaction, arbitration and award, comparative fault, discharge in bankruptcy, duress, estoppel, exclusiveness of remedy under workmen's compensation law, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, set-off, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied, either generally or specifically, in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct: Consistency.

(1) Each averment of a pleading shall be direct and stated in ordinary and concise language.

No technical forms of pleadings or motions are required.

(2) When permitted by Rule 18, a party may set forth two or more separate claims, provided that each claim shall be set forth in separate, numbered counts. A party shall set forth in an answer or reply as many defenses, whether legal or equitable, as he may have. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be liberally construed so as to do substantial justice.

Reporter's Notes to Rule 8: - 1. Although reworded, Rule 8 is substantially the same as FRCP 8. It seeks to accomplish the same purpose as FRCP 8, i.e. to require that pleadings be drafted in such a manner as to give a party fair notice of what the claim is and the grounds upon which it is based. *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99 (1957).

2. Section (a) requires that all claims for relief contain three basic elements, one of which a statement upon which venue and jurisdiction are based which requirement was not found under superseded Ark. Stat. Ann. 27-1113 (Repl. 1962). Section (a)(1) and (2) substitutes the term "ordinary and concise" language from this superseded statute for the term "short and plain" found in the Federal Rule.

3. Section (a)(3) tracks superseded Ark. Stat. Ann. 27-1113 (4) (Supp. 1975) relative to claims for unliquidated damages. The obvious purpose of this section is to prevent a plaintiff from using unliquidated demands to avoid removal of diversity of citizenship cases to federal court.

4. Section (b) follows FRCP 8(b). The theory behind this section is that an answer or reply should apprise a claimant which allegations in the claim are admitted and not in issue and which are contested and thus require proof. *Mitchell v. Wright*, 154 F. 2d 924 (C.C.A. 5th, 1946). In the first sentence of Section (b), the term "ordinary and concise" is substituted for the term "short and plain" used in the Federal Rule.

5. Section (b) permits a pleader to allege that he is without knowledge or information sufficient to form a belief as to the truth of an averment and thereby deny such allegation. This follows superseded Ark. Stat. Ann. 27-1121 (2) (Repl. 1962). In doing so, however, the pleader must act in good faith or risk having his pleading stricken under Rule 12(f). Section (b) also requires that the pleader fairly meet the substance of the averment denied. The purpose of this provision is to proscribe a pleading which neither admits nor denies, but simply demands proof of claimant's allegations. Such an allegation or averment is not sufficient to constitute a denial. *Reed v. Hickey*, 2 F.R.D. 92 (D.C., 1941). Section (b) also follows the Federal Rule by allowing a pleader to admit certain allegations while denying others, and by permitting the use of general denials, although their use is discouraged under federal practice. One asserting a general denial is required to act in good faith in doing so.

6. Section (c) follows in substance FRCP 8(c). The list of affirmative defenses contained in this section is not intended to be exclusive and other defenses may be asserted, if available, even though not specifically listed. The last sentence of this section grants the court discretion to allow a counterclaim or affirmative defense even though improperly designated.

7. Section (d) is essentially the same as FRCP 8(d) and superseded Ark. Stat. Ann. 27-1151 and 27-1121 (Repl. 1962) concerning general denials.

8. Section (e)(1) is designed to avoid verbosity in pleadings. It is a slightly reworded version of FRCP 8(e)(1). Technical rules or forms of pleadings or motions are abolished. Also, this

section follows superseded Ark. Stat. Ann. 27-1121 (Repl. 1962) in requiring separate defenses to be set out in separate, numbered paragraphs.

9. Section (f) follows superseded Ark. Stat. Ann. 27-1150 (Repl. 1962) by requiring that all pleadings be liberally construed so as to do substantial justice.

Addition to Reporter's Notes, 1983 Amendment: - Rule 8(a) is amended to remove the requirement of pleading grounds of jurisdiction and venue.

The original Reporter's Notes were meant to apply to the committee draft of Rule 8(a) and not to the rule as revised by the Supreme Court. In *Harvey v. Eastman Kodak Co.*, 261 Ark. 783, 610 S.W.2d 582 (1981), the Supreme Court made clear its intention that Arkansas had not become a "notice pleading" jurisdiction in the image of the federal system. See, Faculty Note, 34 Ark. L. Rev. 722 (1981).

Addition to Reporter's Notes, 1992 Amendment: - Rule 8(a) is amended to require that the complaint and other pleadings that set forth claims for relief include facts showing that the court has jurisdiction and that venue is proper. This requirement is consistent with statements in the case law regarding personal and subject matter jurisdiction. E.g., *Malone & Hyde, Inc. v. Chisley*, 308 Ark. 308, 825 S.W.2d 558 (1992) (personal jurisdiction is to be determined on the basis of facts alleged in the complaint); *Hesser v. Johns*, 288 Ark. 264, 704 S.W.2d 165 (1986) (question of whether court has jurisdiction over the subject matter is determined from allegations in the complaint). Moreover, the Supreme Court has recognized that a complaint may on its face reveal that venue is improper. E.g., *Mack Trucks of Arkansas, Inc. v. Jet Asphalt & Rock Co.*, 246 Ark. 101, 437 S.W.2d 459 (1969). Nonetheless, some confusion arose in light of the 1983 amendment of Rule 8(a) deleting a requirement, found in the original version of the rule, that the complaint contain a statement of "the grounds upon which venue and the court's jurisdiction depend." However, elimination of the requirement that grounds be pleaded was apparently not intended to modify the role of the factual allegations in the determination of jurisdiction and venue. The 1992 amendment, which is designed to clarify the obligations of the pleader as to jurisdiction and venue, is consistent with the requirement that a complaint allege facts constituting a cause of action. See *Harvey v. Eastman Kodak Co.*, 271 Ark. 783, 610 S.W.2d 582 (1981).

### **History Text:**

History. Amended May 16, 1983; amended December 14, 1992

### **Associated Court Rules:**

Rules of Civil Procedure

### **Group Title:**

III. Pleadings and Motions

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